

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the adoption) NOTICE OF ADOPTION
of New Rule I (ARM 8.61.408))
and (ARM 8.61.1207),)
professional ethics codes)

TO: All Concerned Persons

1. On July 31, 2003, the Board of Social Work Examiners and Professional Counselors published MAR Notice No. 8-61-18 regarding the proposed adoption of the above-stated rule relating to ethics codes at page 1613 of the 2003 Montana Administrative Register, issue no. 14.

2. A public hearing on the proposed adoption of the above-stated rule was held on August 21, 2003. The Board received two comments concerning the proposed adoption. The Board has thoroughly considered the comments and the Board's responses are as follows:

COMMENT NO. 1: One commenter was in favor of the proposed new ethics rule and asked for the reason behind the rule's adoption.

RESPONSE NO. 1: The Board outlined the reasonable necessity of this rule adoption in the proposed rule notice. The rule adoption is necessary to comply with a statutory requirement that the Board establish professional ethics for both licensed professional counselors and social workers, as recommended in a legislative audit.

COMMENT NO. 2: A commenter suggested amending section (2)(a)(vii) of the New Rule to include discrimination based upon sexual orientation and marital status.

RESPONSE NO. 2: The Board based the anti-discrimination sections of the proposed ethics rule on section 49-1-102, Montana Code Annotated (MCA), which provides the basic civil right of Montanans to be free from discrimination. Currently, sexual orientation is not considered a protected class under Montana law. Marital status is a protected class. The Board will adopt the New Rule with the suggested change to include discrimination based upon marital status.

3. Currently the rules for licensed clinical social workers and licensed professional counselors are in separate subchapters within the Board's administrative rules. To avoid confusion among licensees, the Board finds it is necessary at this time to place the ethics rule at two different locations within the Board's rules. Although the rule will appear in two places, the rules are identical. The Department expects that

when the Board's rules are transferred from ARM Title 8, (Department of Commerce), to ARM Title 24, (Department of Labor and Industry), only one ethics rule, pertaining to all licensees under the Board's jurisdiction, will be transferred.

4. After considering the comments, the Board has adopted NEW RULE I as ARM 8.61.408 and as ARM 8.61.1207, with the following changes (stricken matter interlined, new matter underlined):

NEW RULE I (8.61.408) CODE OF ETHICS - LICENSED PROFESSIONAL COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS

(1) through (2)(a)(vi) remain as proposed.

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age or national origin;

(viii) through (2)(b) remain as proposed.

NEW RULE I (8.61.1207) CODE OF ETHICS - LICENSED PROFESSIONAL COUNSELORS AND LICENSED CLINICAL SOCIAL WORKERS

(1) through (2)(a)(vi) remain as proposed.

(vii) discriminate in the provision of services on the basis of race, creed, religion, color, sex, physical or mental disability, marital status, age or national origin;

(viii) through (2)(b) remain as proposed.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
Mary Meis, Acting Chair

/s/ WENDY J. KEATING
Wendy J. Keating, Commissioner
DEPARTMENT OF LABOR & INDUSTRY

/s/ MARK CADWALLADER
Mark Cadwallader,
Alternate Rule Reviewer

Certified to the Secretary of State October 6, 2003.